

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JAMES O. STRUTHERS, Individually,
and as Administrator of the Estate of
ALICIA STRUTHERS, deceased,**

Plaintiff.

V.

CASE NO. 2:06-CV-00127-MHT-SRW

MERCK & CO., INC., a foreign Corporation; ANNE BRANDON, an Individual; LAMONDE RUSSELL, an Individual; and fictitious Defendants A, B, C & D, being those persons, firms or Corporations whose fraud, scheme to defraud, and/or other wrongful conduct caused or contributed to the Plaintiff's injuries and damages, and whose true names and identities are presently unknown to Plaintiff, but will be substituted by amendment when ascertained,

Defendants.

MOTION TO REMAND

Plaintiff respectfully moves the Court to remand this action to the Circuit Court of Montgomery County, Alabama, pursuant to 28 U.S.C. § 1447(c). In support, Plaintiff shows the following:

1. Federal subject matter jurisdiction is not present. The Defendants have failed to meet their burden of establishing federal jurisdiction.
2. Diversity jurisdiction as outlined by 28 U.S.C. § 1332 is not present. The parties to this action are not diverse. Plaintiff is a residents of the State of Alabama. Merck & Co. is incorporated under the laws of the State of New Jersey and has its

principle place of business in New Jersey. Defendants Anne Brandon and Lamonde Russell are residents of the State of Alabama. Furthermore, the amount in controversy exceeds \$75,000.

3. Plaintiff states viable claims under Alabama law against all Defendants. All Defendants are properly joined to this action. Defendant Merck has failed to show that Anne Brandon and Lamonde Russell, residents of Alabama, are fraudulently joined.

4. The removing Defendant failed to obtain consent or timely consent to removal from all properly served Defendants.

For the reasons stated above and in the accompanying Brief in Support of Motion to Remand, Plaintiff urges the Court to remand this action to the Circuit Court of Montgomery County, Alabama.

Respectfully submitted this 23rd day of February, 2006.

/s/ J. Paul Sizemore
ANDY D. BIRCHFIELD, JR. (BIR006)
J. PAUL SIZEMORE (SIZ004)
BENJAMIN L. LOCKLAR (LOC009)
W. ROGER SMITH, III (SMI257)
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the parties as listed below by placing a copy of same in the United States Mail, first class postage prepaid, on this the 23rd day of February, 2006.

Alan T. Hargrove, Jr.
Mike Brock
F. Chadwick Morriss
**RUSHTON, STAKELY, JOHNSTON
& GARRETT, P.A.**
Post Office Box 270
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/s/ J. Paul Sizemore
OF COUNSEL